Hot Ethics Topics

Lt Col Thomas R. Serrano
NGB-JA

AGENDA

- Introduction
- Purpose
- Non-Federal Entities
- Political Activities
- FRG Informal Funds
- SSLI
- Miscellaneous
- Conclusion

INTRODUCTION

Lt Col Thomas R. Serrano

thomas.serrano@ngb.ang.af.mil

703-607-2705

Background

- Army: 1990 – 2003
- ANG: 2003 – present
- Ethics/Fiscal: 2002 – present

Purpose

Provide conference attendees with an understanding of the Ethics issues regarding non-Federal entities, political activities, and state-sponsored life insurance (SSLI) in the National Guard context.

Why NFEs?

- Toughest issues
- Lots of questions about lots of NFEs
- High pucker-factor (CNGB’s personal interest)
- Military associations are NFEs

What is an NFE?

Any organization or individual other than the U.S. Government.

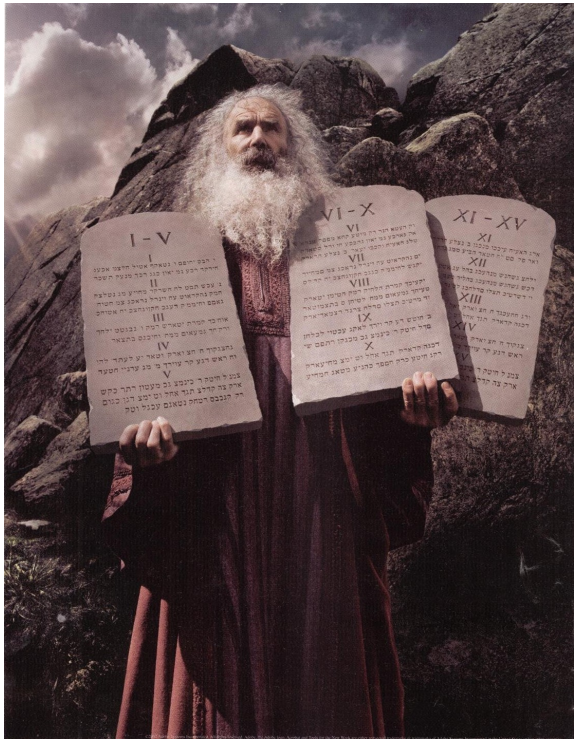
- Charities and not-for-profit groups
- Professional associations (NGAUS, AUSA, Red Cross, Air Force Association)
- Local and state governments (!?!?!!?)
- Spouses' clubs
- Family Readiness Groups (sometimes)
- Commercial enterprises

What Do NFEs Want?

- Government property (things)
- Government personnel
- Use of Government office
- Official endorsement
- Information

Principles

- **Use Gov’t property for <u>official purposes only</u>**
- **May not use public office for <u>private gain</u>**
- **<u>Preferential treatment</u> prohibited**
- **No official actions that <u>conflict</u> with personal financial interests**



Use of Gov't Resources

- **Government resources, time, or equipment may not be used for unauthorized purposes (31 U.S.C. § 1301)**
- **Teaching point: It's the taxpayers' money!!!**

Authorized By Congress

- **Statutory authorizations**
  - 10 U.S.C. § 2558
  - 32 U.S.C. § 508
- **DoD Authorization Act**

Military Relief Societies

- **Authority to endorse and assist in fundraising (when fundraising among own members).**
- **We are talking about AFA, AER, Navy/Marine Corps Relief Society and others**

NFEs on DoD Installations

- DoDI 1000.15 imposes requirements
- No special privileges (JER applies)
- Organizations must indicate they are not official
- Require approval by installation commander
- Look to state law/regulation for rules regarding state Guard installations (probably similar)

Official Communications

- **JER 3-208 permits use of official channels to notify DoD personnel of events of common interests to the DoD personnel**
  - No endorsement!
  - No sales pitch!
  - No hyperbole

Official Speakers

- Public affairs guidance
  - Views reflect Government policy
  - Participation may not appear to endorse contrary views
  - Review and clearance
  - If confrontation, no participation
  - No endorsement

Official Speakers

- Public Affairs Guidance (cont.)
  - No politics
  - No participation in events that have restricted admission policy
  - No participation with groups that have restricted admission policy

Official Speakers

- JER Requirements (3-211)
  - No interference with official duties
  - Public affairs or community relations
  - Appropriate for DoD association
  - Event is of interest or benefit to DoD or community
  - Willing and able to provide comparable support to similar organizations
  - Not barred by statute or regulation

Official Speakers

- JER requirements (cont.)
  - Admission:
    - Free
    - Covers costs of event only
    - Covers costs of portion of event in which DoD participates
    - Exceeds costs of event, but is "incidental to the event"

Official Speakers

- JER requirements (cont.)
  - Fundraisers: (non-profit organizations) May give official policy speech
    - No endorsement
    - No solicitation

Logistical Support

- JER 3-211: Heads of DoD organizations and commands may provide logistical support if:
  - No interference with official duties
  - Supports public affairs or community relations
  - Appropriate for DoD association
  - In the interest or benefit to DoD or community
  - Willing and able to provide comparable support to similar organizations

Logistical Support

- Not barred by statute or regulation
- Admission:
  - Free
  - Covers costs of event only
  - Covers costs of portion of event in which DoD participates
  - Exceeds costs of event, but is "incidental to the event"

Logistical Support

- Admission (cont.)
  - Exceeds cost of event, but is charitable fundraiser not affiliated with CFC
  - Exceeds cost of event, but is charitable fundraiser <u>not in Federal workplace</u> or targeting Federal personnel

Attend Meetings

- **Supervisors may authorize attendance by DoD personnel at meetings in an official capacity at Government expense when attendance serves official purpose**
- **See NGR 37-106**

Co-Sponsorship of Events

- Substantive planning or logistical support to an event (JER 3-206).
  - Topic relevant to DoD mission
  - Professional issues
  - NFE approved by DAEO
  - Written agreement
  - Admission is free or covers only cost of event (Not a fundraiser)

Fundraising by DoD Personnel

- **Heads of DoD organizations and commands may permit DoD personnel to raise funds in designated areas (not Federal workplace or GSA property)**
- **Personal quarters, entrance to exchange, etc.**

Endorsements

- Official endorsements are

Endorsements

- Why prohibited???
  - Give appearance of official certification or approval (FDA)
  - Portray item as public rather than commercial
  - Preferential treatment

Think a women's college won't prepare you for the *real world?*

Linda Crowley '70
Senior Political Correspondent
CNN

Carolyn Aldigé '67
Founder and President
Cancer Research Foundation
of America

First, let's define our terms. In the *real world*, women often earn less than men—sometimes significantly less—for comparable work. They also hold far fewer senior positions in business, and in governing and legislative bodies. That's the *real world*.

Now consider this: while only 2% of all female college graduates attended women's colleges, they make up 20% of the women in Congress and nearly a third of a *Business Week* list of rising women stars. The first woman named as United States Secretary of State? First woman selected as the CEO of a commercial airline? First woman appointed to a presidential cabinet post? All women's college graduates.

The bottom line? Randolph-Macon Woman's College won't just prepare you for the real world.

We'll prepare you to change it.

SAFE Profits
In An Uncertain World

They predicted the wave of corporate earnings scandals...the Dow's nosedive...and the explosion in gold and mining stocks.

They led investors to profits as high as 426% while most other investments were plummeting.

Now — in one place and at one time — the world's most successful and celebrated investment experts are gathering again...

...To show YOU how to reap safe, rich profits in today's dangerous world.

For nearly three decades, a small group of very sophisticated investors have come together once a year to get the exclusive recommendations of the world's most insightful and successful experts.

Over the years, they have ridden the leading edge of every major economic and investment trend — reaping profits measured in *hundreds of percent* — even during times when most markets were wracked by turmoil.

Templeton

This year, with the investing environment presenting more peril and opportunity than perhaps ever before...and with a stunning roster of legendary investors presenting their views...attendees at this exclusive conference expect some of their richest gains ever.

And, thanks to the sponsorship of

JACK RIVKIN, the frequent CNBC guest host and recently retired head of Citigroup's technology venture capital group, will reveal tips and picks you won't find elsewhere.

THOM CALANDRA, editor-in-chief of CBS MarketWatch and widely recognized as one of today's top financial journalists, will unveil the latest, behind-the-scenes market-drivers that his investigations have uncovered.

BERNARD GOLDBERG, author of the best-selling and controversial exposé "Bias," will show how your daily news is distorted, and provide fascinating anecdotes that can be revealed only in this intimate setting.

And that's just the start: Literally

In Person!

Chairman of the Joint Chiefs of Staff
GEN. HUGH SHELTON

Shelton

If you want to know what really went on in the corridors of power on September 11...and what the future holds in our dramatic battle against terrorism...you need to hear from the man who was at the helm of America's armed forces during some of the darkest days in our history.

In what promises to be a spell-binding presentation, followed by an intimate question-and-answer session, General Hugh Shelton will provide us with critical infor-

DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

DEC 12 2012

REPLY TO ATTENTION OF:

MEMORANDUM FOR THE ARMY

SUBJECT: Private Organization Membership Campaigns

As the world's premier ground fighting force, the United States Army is well-organized, equipped, and trained to succeed in any mission it is asked to perform both today and in the future, even as an already complex strategic environment continues to adapt and evolve. Many private organizations have been supporters of our success. These organizations tirelessly advocate to help in a variety of ways from shaping defense policy to positively improving the professional and personal well-being of soldiers, civilians, and their families. These private organizations enjoy close, historical ties with the military community. Many are composed largely of serving and retired military and civilian personnel from all of the components. As you know, official Army support to private organizations is strictly regulated (see DoD 5500.7-R, *Joint Ethics Regulation* and AR 600-20, *Army Command Policy).*

In spite of our best efforts, many soldiers perceive that they are being coerced to join certain organizations and that their membership in such organizations is tracked. Any coercion, real or perceived, is unacceptable and does not befit this magnificent Army. Any practice that involves or implies compulsion, coercion, undue influence, or reprisal in the conduct of membership campaigns is strictly prohibited. This prohibition includes holding repeated orientations or meetings, or counseling those who have decided not to join after being provided information about the organization. It also includes using membership statistics when evaluating an individual's duty performance. While you may discuss the general merits and benefits of joining and participating in private organizations, without showing favoritism for one organization over another, all of your actions must be done within the limits of the standards of conduct principles discussed above.

Senior leaders will ensure that the chain of command implements and abides by the standards of conduct involving private organization membership campaigns so that soldiers' rights are protected. Ethics counselors are available to assist with training regarding these rules.

ERIC K. SHINSEKI
General, U.S. Army
Chief of Staff

Thomas E. White
Secretary of the Army

Endorsements

- Official endorsements permitted:
  - Combined Federal Campaign
  - OPM emergency appeals
  - Military relief societies (when fundraising among members)
  - DoD organizations when fundraising among members for benefit of own members
  - National Guard exception

Endorsements

- Official endorsements (cont.)
  - Result of compliance with agency requirements.
  - Recognition of achievement in an agency program.
  - Acknowledgement of contribution to DoD (substitute for endorsement)

Common Requests From Non-Federal Entities

Requests for DoD Property

- **JER 3-211 analysis**
- **Applicable regulations for motor vehicles, MWR facilities, GSA buildings, etc.**
- **National Guard lend/lease provisions apply if we give the property to someone without operator/supervisor**

Requests for Personnel

- **Innovative Readiness Training (IRT).**
- **Bands (DoDI 5410.19, encl. 8).**
- **Menial purposes (ushers, guards, escorts) (DoD 5410.18, section 4.2.16).**
- **Speakers at private fundraisers**
- **See also NG Pam 360-5**

Requests for DoD Personnel (cont)

- Speakers at for-profit conferences.
  - Fees cover costs of event only
  - Speaker is incidental to event
  - Notify NGB Ethics Counselor to facilitate coordination

Requests for DoD Personnel (cont)

- Participation as “Star Attractions.”
  - E.g.: receive award, honorary chair, present award, sit at head table
  - Usually to promote event or give appearance of endorsement
  - Usually fundraisers

Management of NFEs

Management of NFEs

- Three Options:
  - Management in an official capacity
  - Official liaison
  - Management in a personal capacity

Management in Official Capacity

- Problems:
  - Conflict of Interest (18 U.S.C. 208)
    - Fiduciary duty to NFE
  - Use of appropriated funds to manage NFE
  - Confusing allegiance

Management in Official Capacity

- Prohibited without DoD GC approval.
- JER 3-202 lists organizations that may be approved:
  - Relief societies.
  - Academy-related associations.
  - Entities that regulate medical care.
  - Foreign groups that promote understanding with US military.

Official Liaison

- **JER 3-201: Official liaison when <u>significant and continuing</u> DoD interest**
- **No conflict of interest**
- **Official duty**
- **Limited personal liability**
- **YES! YES! YES! YES! YES!**

Management in Personal Capacity

- **Really an issue of <u>outside activities</u>**
- **FO and GO may not accept compensation for boards of directors**
- **Potential conflicts of interest**
- **May not use Gov’t resources**
- **May not use official titles**
- **Must report on financial disclosure**

THE END

DILBERT SCOTT ADAMS
THIS CONCLUDES MY PRESENTATION. ARE THERE ANY QUESTIONS?
HOW DO I GET THE BOREDOM OUT OF MY HEAD?!!
THE FUNNY THING IS THAT I'LL LIST THIS ON MY ANNUAL ACCOMPLISHMENTS.
AIR! I NEED AIR!!!

THANK GOODNESS!

Political Activities

Analyzing The Problem

- Political activities by military personnel
- Political activities by civilian employees*
- Political activities on military “installations”
- Lobbying

Key References

- Political activities by military personnel
  - DoD Dir 1344.10, ***Political Activities by Members of the Armed Forces on Active Duty***, August 2, 2004
  - ASM 05-002, 15 Apr 05
  - AR 600-20, **Army Command Policy**, 7 June 2006
  - AFI 51-902, **Political Activities by Members of the US Air Force**, 1 January 1996
- Political activities by civilian employees
  - DepSecDef memo, subject: ***Civilian Employees' Participation in Political Activities***, Jan 21, 2004
- Political activities on military installations
  - SecDef message 0312052112Z,***DoD Public Affairs Policy Guidance***
- Lobbying
  - ***18 USC § 1913***

Civilian & Statutory Control of a Limited Military

- “. . . the traditional concept that Service members should not engage in partisan political activities . . .”
- Seems axiomatic to us
- Not so in many other countries

Political Activities by Military Members

- Spirit and intent of DoDD 1344.10 prohibits any activity that may be viewed as directly or indirectly associating DoD with partisan politics
- “Any activity that may be viewed as associating the Department of Defense . . . or any component . . . directly or indirectly with a partisan political activity shall be avoided.”

DoDD 1344.10, para E3.4

Political Activities by Military Members

- Directive does not apply to National Guard members, either traditional or FTNGD
- Need to consider other sources of law to determine whether conduct is permissible
  - Fourteen Principles of Ethical Conduct
  - JER
  - Uniform Regulations (AR 670-1; AFI 36-2903)
- Some sources apply to FTNGD

Additional Requirements

- Give full time and attention to the performance of military duties
- Avoid outside activities prejudicial to good order and discipline, or likely to bring discredit on Armed Forces
- Appropriate wear of military uniform

Military Members: What's Permitted

(Active Duty)

- Limited "private citizen" standard
  - Register to vote and vote
  - Encourage others to participate in political process
  - Express purely personal opinions *(caution)*
  - Join a political club
  - Attend meetings, rallies as spectator
  - Give money to political organizations
  - Personal letters to editor *(caution)*
  - Normal bumper stickers

Military Members: What's Not

Military Members: What's Not

Source: Larimer County (CO) Republican Party website

Military Members: What's Not

- No official influence
- No campaigning
  - Cannot be candidate or nominee
- No participation in partisan political campaigns, speeches, articles
  - Even in "private" capacity
  - Or as "honoree"
- No large signs or posters on POVs

Military Members: Public Office

- Generally, may not hold or exercise federal, state, or local civil office
- Reserve or National Guard member ordered to AD for 270 days or less: limited exception
  - Still subject to noninterference
- Reserve or Guard member on AD for 271 or more days
  - May not hold certain federal office
  - May hold state office but may not exercise functions
  - Days on orders govern, not actual time on duty
  - Cannot play games with orders to circumvent rule
- Must read regulation

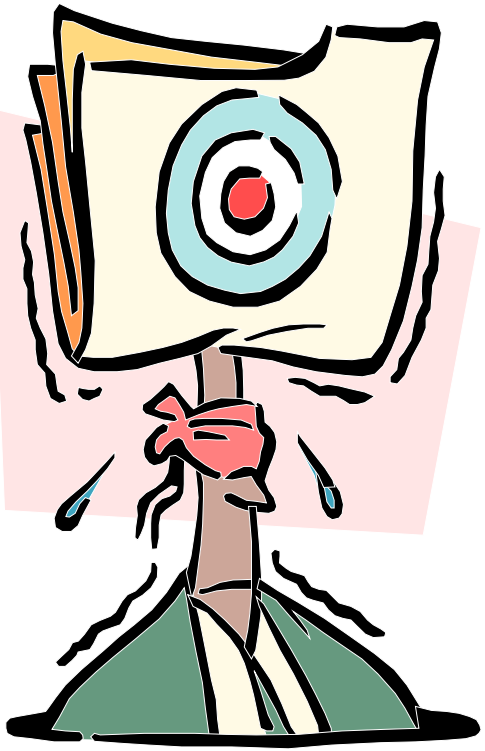
DoD Facilities

- Command newspapers – no campaign news, discussions, cartoons, editorials
- No use of installation or facilities by candidates for political activities
  - *Just say no to press participation*
- No support for off-post events
- Many Guard facilities not “installations” under regulation - follow state policies
  - Facility use might be okay, but personnel issues

Seeking Exception?

- What do you want to do?
- Why is it in the (command's) (service's) best interest to do so?
- Would you still be recommending it if all the players and parties were different?

Questions ?



FRG INFORMAL FUNDS

FRG Informal Funds

- References
  - DoD 5500.7-R (Joint Ethics Regulation)
  - AR 215-1 (Morale, Welfare, And Recreation Activities And Nonappropriated Fund Intstrumentalities)
  - AR 600-20 (Command Policy)
  - AR 608-1 (Army Community Service Center) (New release!!)
  - AFI 34-223 (Private Organization Program)

FRG Informal Funds

- Informal Funds
  - Private funds generated by FRG members used to benefit the FRG
  - Authorized by the Commander IAW AR 600-20 and AFI 34-223
  - Examples—parties, social outings, volunteer recognition, unofficial information

FRG Informal Funds

- Fiscal Issues
  - Do not use for purchases for which APFs are appropriate
  - Do not augment unit cup-and-flower fund
  - Do not commingle with APFs, NAFs, MWR, or personal funds

FRG Informal Funds

- Management Issues
  - Fund custodian and alternate appointed by commander (cannot be Cdr, deployable SM, or FRG leader)
  - Establish non-interest bearing account in FRG name
  - Commander not a signatory on the account
  - Accounting reports required by Appendix J
  - SOP maintained to establish purpose for informal funds

FRG Informal Funds

- Fundraising Issues
  - Only authorized fundraising IAW JER, paragraph 3-210a(6)
  - No external fundraising
  - Annual gross receipt cap of $5000 per calendar year
  - Fundraising event must be consistent with informal fund purpose

FRG Informal Funds

- Fundraising Issues (cont.)
  - Unit commanders may accept gifts of $1000 or less for informal fund (AF rules unclear)
  - POs with similar family readiness goals and objectives not limited in fundraising scope, but . . .
    - Conflicts of interest must be avoided
    - PO should not be treated like FRG
    - Must not be command-established or directed

SSLI

- JER, para 3-209, permits states to promote insurance sponsored by the military department of a state to the same extent as SGLI
- 37 U.S.C. § 707 permits National Guard association life insurance sponsored by a state military department to be deducted as allotment from military pay
- When does National Guard association insurance become SSLI?
- Can they have a booth at the SRP?

Questions ?